IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4054 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMMED IQBAL @ AUNDU ABDUL RAUF SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4054 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/11/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 3-4-2001 passed by the Police Commissioner, Ahmedabad City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that two offences have been registered against the detenu, one at DCB Ahmedabad City being C.R.No.5008/2000 dated 23-7-2000 and other at Nashabandi Police Station C.R.No.1839/2000 dated 6-12-2000. He has mainly contended that the detaining authority in the order at page 2 (page 24 of the compilation) has stated that the detenu was arrested on 18-3-2001 whereas the detaining authority, while arriving at a subject satisfaction, has shown the detenu as absconding and hence, stated as not arrested and, therefore, the order of detention may be declared as illegal and bad as there is non-application of mind on the part of the detaining authority.

4. It appears that the detaining authority has not applied its mind while passing the detention order when it is stated at page No.2 of the grounds of detention attached with the detention order that the detenu was arrested on 18-3-2001 whereas the said authority has stated in the later portion of the grounds of detention that the detenu was absconding and, therefore, he has not been arrested. Though an affidavit-in-reply has been filed by the detaining authority, the facts stated in the grounds of detention has been reiterated which is reflected in para 16 of the reply. It is stated in the said para that when the order of detention was passed, the detenu was absconding and hence, he was not arrested. It is a clear non-application of mind on the part of detaining authority and hence, the subjective satisfaction arrived at by him is vitiated and it seems that the order has been mechanically passed and, therefore, continued detention of the detenu is illegal and same cannot be sustained. When the petition succeeds only on this ground, learned advocate for the petitioner did not press for other reasons.

5. The petition is allowed. The impugned order of

detention dated 3-4-2001 passed against the detenu is hereby quashed and set aside. The detenu Mohmmed Iqbal Aundu Abdul Rauf Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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